majority of the Court of Appeal, and also accord with the principles of *Smith* v. *Butler* and *In re Sandwell Park Colliery Co., supra,* their Lordships are of opinion that the purchaser's appeal to that Court was rightly allowed and that the present appeal by the vendor must fail.

Their Lordships will therefore report to the Head of the Federation of Malaya as their opinion that this appeal ought to be dismissed and that the appellant ought to pay, the costs of this appeal.

Appeal dismissed.

Solicitors: *Shelton, Cobb & Co.; Peacock & Goddard.*

SAJAN SINGH v. SARDARA ALI

[J. C. (Lord Cohen, Lord Denning and Lord Jenkins) December 16, 1959]

[Privy Council Appeal No. 19 of 1957]

Contract — Illegal contract — Property transferred under — Detinue and trespass — Deceit practised on public administration of the country in order to get haulage permit for vehicle — Plaintiff not relying on illegal transaction to establish claim.

The plaintiff Sardara Ali entered into an agreement with the defendant Sajan Singh whereby the defendant was to acquire a lorry (the subject matter of the proceedings) and register it in his own name and obtain a haulage permit for the lorry, but it was intended that the lorry should be purchased by the plaintiff and used by him on his own account. This transaction was in contravention of certain regulations governing the transfer and use of motor vehicles. For some time the plaintiff used the lorry as his own, but operated it in the name of the defendant. Subsequently they fell out and the defendant removed the lorry from the plaintiff's possession without his permission. The plaintiff then brought an action for declaration that he was the owner of the lorry, coupled with a claim in detinue. The learned trial Judge was satisfied as to the truth of the plaintiff's claim but took notice of the illegality and gave judgment for the defendant. He held that as both the plaintiff and defendant had practised deceit on the public administration of the country, it was the duty of the Court to refuse the plaintiff aid. The Court of Appeal reversed this decision and held that the plaintiff could recover damages for trespass as he did not seek to found his claim on the illegal transaction. The defendant appealed.

Held: (1) although the transaction between the plaintiff and the defendant was illegal, nevertheless it was fully executed and carried out, and on that account it was effective to pass the property in the lorry to the plaintiff. Accordingly the plaintiff could succeed in detinue;

(2) the plaintiff also had a clear claim in trespass as on the facts he was entitled to rely on his possession.

Decision of the Court of Appeal reported in [1957] M.L.J. 165 affirmed.

Cases referred to:—

(1) *Scarfe* v. *Morgan* (1838), 4 M. & W. at p. 281.
(2) *Muckleston* v. *Brown* (1801), 6 Ves. Jnr. at p. 69.
(3) *Bowmakers Ltd.* v. *Barnet Instruments Ltd.* [1945] K.B. 65 at p. 70; [1944] 2 All E.R. 579.
(4) *Bishopsgate Motor Finance Corpn. Ltd.* v. *Transport Brakes Ltd.* [1949] 1 K.B. at p. 338.

PRIVY COUNCIL. Appeal from a judgment of the Court of Appeal of the Federation of Malaya (Thomson C.J., Hill and Syed Sheh Barakbah JJ.) reported in [1957] M.L.J. 165, reversing a judgment of the Supreme Court, Federation of Malaya, Settlement of Malacca (Smith J.) September 19, 1956).

R. Milner (*W. R. T. Macaulay*) for the appellant.

Respondent did not appear and was not represented.

Lord Denning: The plaintiff Sardara Ali is a lorry driver living at No. 132 Lorong Panjang, Malacca. The defendant Sajan Singh is a haulier living at Bukit Asahan Estate, Malacca. The two of them entered into an illegal transaction about a lorry. They broke the Regulations which governed the transfer and use of motor vehicles. The question is what are their rights consequent on this illegality.

The Regulations in question were made soon after the war by the Commissioner for Road Transport under the powers conferred on him by the Road Transport Proclamation dated 6th October, 1945: and they were affirmed and continued afterwards by the Road Transport (Amendment) Ordinance, 1949. They fell into two groups.

(i) The Regulations which required vehicles to be *registered* with the Registrar of Motor Vehicles: under these Regulations any person who had a motor vehicle had to register it and give particulars of his title to it. And it was provided that no person should "sell, exchange, part with the possession of, purchase, acquire or take possession of any motor vehicle without a permit in writing from the Registrar." See section 2 of the Registration of Motor Vehicles Regulations dated 10th October, 1945.

(ii) The Regulations which controlled the *use* of vehicles for the carriage of goods. Under these Regulations it was provided that no person should "use a goods vehicle or cause suffer or permit a goods vehicle to be used for the carriage of goods" unless it was an *authorised vehicle,* that is to say, unless there was a haulage permit authorising it to be so used. The Regulations said that a vehicle "shall not be deemed to be an authorised vehicle unless it is used by the holder of a permit in accordance with the conditions of such permit." See section 3 of the Motor Vehicles Commercial Use (Amendment) Regulations 1948.

For some years after the war it was very difficult for a newcomer to get a haulage permit. The policy of the Road Transport Department at that time was to grant haulage permits only to those persons to whom they had been granted before the war.

Their Lordships can now turn to the facts of the case. The plaintiff Sardara Ali is a lorry driver. In 1948 he wanted to acquire a lorry and use it to carry goods on his own account. But he had no chance of getting a haulage permit as he had never had one before the war. The defendant Sajan Singh was a haulier who had apparently had a haulage permit previously and had every chance of getting one. So they came to an arrangement whereby the defendant Sajan Singh was to acquire a second-hand lorry and to register it in his own name and to get a haulage permit for it in his own name, but all the time it was intended that it should belong to the

plaintiff Sardara Ali and be used by him on his own account. The transaction was carried out in this way: In December, 1948, the British Military Disposals Board were offering six second-hand motor lorries for sale. The defendant Sajan Singh bought them in his own name but the plaintiff Sardara Ali paid $1,500 towards the cost on the understanding that one of them should belong to him. This vehicle was a Dodge lorry numbered M. 2207. It was registered in the name of the defendant Sajan Singh and the haulage permit was issued in his name. On 4th August, 1950, the plaintiff Sardara Ali with a friend Nihal Singh paid another $3,500 and the defendant Sajan Singh gave the plaintiff Sardara Ali a document in the Punjabi language which, being translated, was as follows:—

"I, Sajan Singh, (Malacca) have sold a Dodge lorry No. M. 2207 to Nihal Singh and Sardara Ali jointly for $3,500. Both of them can sell this lorry but cannot sell the haulage permit. The haulage permit is to be returned to Sajan Singh. If anyone asks for the lorry after my death he cannot get it. Even if (anyone) takes it by force then (he or she) must pay $3,500. If there is anything concerning the lorry then Nihal Singh and Sardara Ali can represent. Sajan Singh."

In 1953 Nihal Singh sold his share in the lorry to the plaintiff Sardara Ali, who was thenceforward the sole person interested on the purchaser's side. He used the lorry as his own. He kept it at his own address, 132 Lorong Panjang, and used that address as his base of operations with it. He received the incomings, and according to his own story (which the trial judge in substance accepted) paid for the petrol and other outgoings. But as the lorry was registered in the name of the defendant, he did it all in the defendant's name. And as the defendant was liable for income tax, insurance, and so forth, the plaintiff delivered accounts to the defendant showing incomings and outgoings; and the plaintiff paid to the defendant the amounts due for insurance, taxes, and so forth. In short, the lorry belonged to the plaintiff but was operated in the name of the defendant.

All this method of operation was quite illegal. Although the plaintiff used the vehicle as his own, it was registered in the name of the defendant "Sajan Singh, Bukit Asahan Estate, Malacca". The haulage permit, too, was issued in the defendant's name. It was issued subject to the express condition that "The permit holder shall use the vehicle from a base at Bukit Asahan Estate, Malacca": and to the condition that "This permit is personal to the permit holder. It may not be transferred or assigned": and to the further condition that "the permit holder shall not suffer or permit any authorised vehicle to be driven by a person who is not a bona fide employee of the permit holder". It was therefore quite illegal for the defendant to permit the plaintiff Sardara Ali to use it at all on his own account. The two of them were, as Smith J. said, fellow conspirators engaged in practising a deceit on the public administration of the country. For aught that appears, both were equally guilty.

In 1954 the plaintiff and the defendant fell out. The defendant said that the lorry belonged to him and that the plaintiff was only a driver employed by him. The plaintiff said it was his, and he applied to the Commissioner of Road Transport for a haulage permit in his own name. His solicitors, on 29th December, 1954, wrote to the Commissioner of Road Transport and said: "What we are asking for is the removal of the present permit holder and the re-issue of the permit in our client's own name." The defendant promptly took counter-measures. He seized the lorry. In the afternoon of 26th or 27th January, 1955, whilst the plaintiff was absent from his home, the defendant came and took the lorry away. He has always since refused to return it, claiming that it belongs to him.

In June, 1955, the Commissioner for Road Transport refused to grant a haulage permit to the plaintiff. The refusal was in some way connected with Government policy about the entry of Malays into the road transport industry. Undeterred by this refusal, the plaintiff continued to claim the lorry. In November, 1955, he brought these proceedings against the defendant. In his Statement of Claim he relied on the document of sale of 4th August, 1950, and set it out in full. He said he had paid the defendant $5,000. He further alleged that the vehicle was in his possession until the 27th January, 1955, when the defendant took it away and had since refused to return it. By his prayer he asked:

(i) for a declaration that the plaintiff is the owner of the authorised vehicle;

(ii) for the return of the Dodge Motor lorry No. M.2207 as an authorised vehicle, i.e. together with the use of the haulage permit;

(iii) in the alternative damages for detinue $5,000;

(iv) damages at $400 per month for loss of earnings or profit from the 27th January, 1955.

The defendant in his Defence claimed that the lorry belonged to him and that the plaintiff was employed by him as a driver. He denied having signed the document of sale dated 4th August, 1950.

At the trial the principal issue was whether the document was a forgery or not. A handwriting expert was called. The Judge (Smith J.) held the document was genuine. He said he was satisfied of the truth of the plaintiff's claim. But he drew attention to the illegality of the transaction. No question of illegality appeared on the pleadings but in the course of the trial counsel for both parties agreed that the Registrar and Inspector of Motor Vehicles was deceived during the period of the British Military Administration. When the Judge came to give judgment he took notice of this illegality and held that there was a "moral estoppel" which prevented the plaintiff from recovering. It was the duty of the Court, he said, when it realised that a litigant was setting up his own fraud to refuse him aid. "The principle", he said, "is *'Ex turpi causa non oritur actio'* . . . The plaintiff on his own shewing was party to a deceit whereby the Registrar of Motor Vehicles issued a haulage permit for lorry

M.2207 which he would not have done if he had not been deceived."

The Court of Appeal reversed this decision. Thomson C.J. (with whom Syed Sheh Barakbah J. agreed) said that "The action was not in contract. It was an action for trespass to goods". They held that the plaintiff could recover damages for trespass and that the amount should be the value of the lorry at the time of the trespass, that is to say, in January, 1955, but no damages for loss of profits. Hill J. would have gone further and given the plaintiff the declaration he sought and ordered the defendant to return the lorry or pay the value at the time of seizure.

It is not, perhaps, strictly accurate to say that the action was laid in trespass. It was an action for a declaration coupled with a claim in detinue. In order to get a declaration, it was essential for the plaintiff to show that he was the owner of the lorry and that it was an authorised vehicle. In order to succeed in detinue, it was essential for the plaintiff to show that he had the right to immediate possession of the lorry at the time of commencing the action, arising out of an absolute or special property in it, see *Bullen & Leake,* 3rd Edn. p. 312. And in detinue their Lordships think he succeeded. Although the transaction between the plaintiff and the defendant was illegal, nevertheless it was fully executed and carried out: and on that account it was effective to pass the property in the lorry to the plaintiff. There are many cases which show that when two persons agree together in a conspiracy to effect a fraudulent or illegal purpose — and one of them transfers property to the other in pursuance of the conspiracy — then, so soon as the contract is executed and the fraudulent or illegal purpose is achieved, the property (be it absolute or special) which has been transferred by the one to the other remains vested in the transferee, notwithstanding its illegal origin, see *Scarfe* v. *Morgan,*[1] per Parke B. The reason is because the transferor, having fully achieved his unworthy end, cannot be allowed to turn round and repudiate the means by which he did it — he cannot throw over the transfer. And the transferee, having got the property, can assert his title to it against all the world, not because he has any merit of his own, but because there is no one who can assert a better title to it. The Court does not confiscate the property because of the illegality — it has no power to do so — so it says, in the words of Lord Eldon: "Let the estate lie where it falls", see *Muckleston* v. *Brown.*[2] This principle was applied by the Court of Appeal recently in *Bowmakers Ltd.* v. *Barnet Instruments Ltd.*[3] at the top of p. 70. The parties to the fraud are, of course, liable to be punished for the part they played in the illegal transaction, but nevertheless the property passes to the transferee.

Their Lordships do not over look the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the sale: but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put the plaintiff in difficulty if he had to prove his title, but it would not invalidate it, see *Bishopsgate Motor Finance Corpn. Ltd.* v. *Transport Brakes Ltd.*[4] at p. 338.

In this case, on the facts pleaded and the findings of the trial Judge, the plaintiff had a clear cause of action. He had actual possession of the lorry at the moment when the defendant seized it. Despite the illegality of the contract, the property had passed to him by the sale and delivery of the lorry, compare *Bowmakers Ltd.* v. *Barnet Instruments Ltd.* referred to above. When he commenced this action, he had the right to immediate possession. Their Lordships think that in these circumstances he had a claim in detinue. But he had also, as the Court of Appeal has found, a clear claim in trespass. Trespass was not in terms pleaded, but the facts were pleaded. And on the facts the plaintiff was entitled to rely on his possession. The Court of Appeal did not actually direct amendment of the pleadings, but it is clear from their judgment that, had they been asked to do so, they could have done so. Their Lordships think that, on the facts pleaded, they were fully justified in reversing the decision of the trial Judge.

The plaintiff would have been entitled to an order for the return of the vehicle or its value. As it had not been returned, he was clearly entitled to its value. That is the Order made by the Court of Appeal and their Lordships agree with it.

Their Lordships would only add this: if the law were not to allow the plaintiff to recover in this case, it would leave the defendant in possession of both the lorry and the money he received for it. Their Lordships are glad to have been able to reach the conclusion that, on the facts of the present case, this is not the law.

Their Lordships will therefore report to the Head of the Federation of Malaya as their opinion that this appeal ought to be dismissed.

Appeal dismissed.

Solicitors: *Henry S. L. Polak & Co.*